

SERVICE DATE – SEPTEMBER 27, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36179

LAKE STATE RAILWAY COMPANY—LEASE EXEMPTION—
LINE OF GRAND TRUNK WESTERN RAILROAD COMPANY

Digest:¹ This decision denies two requests to revoke the authority for Lake State Railway Company to lease from Grand Trunk Western Railroad Company and to operate a line of railroad in Port Huron, Mich.

Decided: September 26, 2018

BACKGROUND

On May 10, 2018, Lake State Railway Company (LSRC) filed a verified notice of exemption under 49 C.F.R. § 1150.41 to lease from Grand Trunk Western Railroad Company (GTW) and to operate approximately 3.9 miles of rail line extending from milepost 55.8 to milepost 59.7 in Port Huron, Mich. (the PH Track). In the notice, LSRC stated that it would lease and operate the PH Track and that “GTW would retain responsibility for the Black River drawbridge” located at milepost 58.2. Notice of the exemption was served and published in the Federal Register on May 25, 2018 (83 Fed. Reg. 24,384). The exemption became effective on June 11, 2018.²

On July 9, 2018, the International Association of Sheet Metal, Air, Rail and Transportation Workers-Transportation Division (SMART-TD) petitioned the Board to revoke the lease exemption, alleging that LSRC’s verified notice contained false and misleading information. SMART-TD alleges that, contrary to the representation in the verified notice that the drawbridge would remain under the control of GTW, GTW informed SMART-TD that the drawbridge would be controlled by LSRC in accordance with the lease, and that, in fact, LSRC employees have been operating the drawbridge since the transaction was approved.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On June 7, 2018, the Board denied a motion to stay the effectiveness of the exemption filed by the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters, Grand Trunk Western General Committee of Adjustment (BLET).

(SMART-TD Pet. 2-3.) SMART-TD argues that because GTW does not control the drawbridge, the notice of exemption should be declared void ab initio pursuant to 49 C.F.R. § 1152.50(d)(3).

On July 11, 2018, BLET also filed a petition to revoke the lease exemption, similarly arguing that while LSRC's notice stated that GTW would retain responsibility for the drawbridge, in practice LSRC, not GTW, is now operating the drawbridge. (BLET Pet. at 2-3, July 11, 2018.)

LSRC filed a reply to both petitions on July 30, 2018. LSRC asserts that its statement in the notice of exemption that "GTW will retain responsibility for the Black River drawbridge" was referring to maintenance and repair responsibility for the drawbridge, not its operation. (LSRC Reply 1-2, July 30, 2018.) According to LSRC, any ambiguity concerning GTW's retained responsibility was not false or misleading. LSRC asserts that its notice made clear that LSRC would be leasing and operating the entire PH Track and that nothing "indicated that LSRC's train movements over the PH Track would be interrupted by intervening GTW operations on the . . . drawbridge in the middle of the line." (*Id.* at 2.) Additionally, LSRC argues that this issue is not material to whether the lease transaction qualifies for the relevant class exemption, as it was not even required to provide this information. (*Id.* at 3-4.) LSRC therefore argues that this issue does not render LSRC's exemption void ab initio. (*Id.* at 1-3, citing Grand Elk R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35187 (STB served July 13, 2009).)

DISCUSSION AND CONCLUSIONS

Pursuant to 49 U.S.C. § 10502(d), an exemption may be revoked, in whole or in part, if the Board finds that application of a statutory provision is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. The party seeking revocation has the burden of showing that this standard is met, 49 C.F.R. § 1121.4(f), and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and that more detailed scrutiny of the transaction is necessary. Grand Elk R.R., FD 35187, slip op. at 2. In addition, an exemption under 49 C.F.R.pt. 1150 Subpart D is void ab initio if the notice contains false or misleading information. Failure to disclose material information can render a notice misleading by omission, and therefore void ab initio. See U S Rail Corp.—Lease & Operation Exemption—Shannon G., a N.J. LLC, FD 35042, slip op. at 3-4 (STB served Oct. 8, 2008). "Material" means the transaction would not have otherwise qualified for an exemption. See Berkshire Scenic Ry. Museum, Inc. v. ICC, 52 F.3d 378, 381 (1st Cir. 1995).

The Board will deny SMART-TD's and BLET's petitions to revoke. In its notice of exemption, LSRC stated that "GTW will retain responsibility for the [drawbridge]." (LSRC Notice 2.) In its reply to the petitions to revoke, LSRC has clarified that, specifically, GTW retained responsibility for "maintenance and repair" of the drawbridge. (LSRC Reply 1, July 30, 2018.) Although LSRC's notice did not specify that GTW's responsibility for the drawbridge pertained only to maintenance and repair, it nonetheless made clear that LSRC would be the operator of the entire PH Track, which includes the drawbridge. Moreover, the issue of which carrier would be responsible for the maintenance and repair of the drawbridge was not material

to whether the underlying lease transaction qualified for the § 1150.41 exemption. The Board therefore finds that LSRC's notice did not contain false or misleading statements.

It is ordered:

1. SMART-TD's petition to revoke is denied.
2. BLET's petition to revoke is denied.
3. This decision is effective on its date of service.

By the Board, Board Members Begeman and Miller.